

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

1 DENNIS ALLEN, MARY JANE) Case No: C-1-01-159
2 CRACRAFT, LELAN LITTRELL and)
3 GLASS, MOLDERS, POTTERY, PLASTIC)
4 AND ALLIED INDUSTRIAL WORKERS,)
5 LOCAL NO. 41, AFL-CIO,)
6 Plaintiffs,)
7 vs.)
8 LEONARD D. KRISTAL, and JOHN L.)
9 CRARY,)
10 Defendants.)
11 _____)
12 JOHN L. CRARY,)
13 Cross-Claimant,)
14 vs.)
15 LEONARD D. KRISTAL,)
16 Cross-Defendant.)
17 _____)
18 JOHN L. CRARY,)
19 Third-Party Plaintiff,)
20 vs.)
21 POLLY JONES, SHIRLEY MONROE,)
22 JAMES THELAN,)
23 Third-Party Defendants)
24 _____)

1 I. FINDINGS OF FACT:

- 2 1. Polly Jones (“Jones”) was the named Plan Administrator for the Lassen Group Benefit Plan
3 during the Relevant Time Period.
4 a. Declaration of Jennifer Chen, Exhibit A.
5 b. Declaration of Jennifer Chen, Exhibit B.
- 6 2. As the Plan Administrator, Jones had complete authority to control and manage the plan,
7 and had full discretion to determine eligibility, to interpret the plan and to determine
8 whether a claim should be paid or denied, according to the provisions of the plan.
9 a. Declaration of Jennifer Chen, Exhibit A.
- 10 3. Jones’ husband, Randy Pickering, owns Pickering Insurance Services.
11 a. Declaration of Jennifer Chen, Exhibit C.
- 12 4. Jones and Randy Pickering have been married for 20 years.
13 a. Declaration of Jennifer Chen, Exhibit D.
- 14 5. Jones was the Operations Manager at Pickering Insurance Services.
15 a. Declaration of Jennifer Chen, Exhibit E.
- 16 6. Jones instructed Leonard D. Kristal (“Kristal”), the CEO of The Lassen Companies, Inc.
17 (“Lassen”) on how much to pay for the health plan premiums to Great-West Life and
18 Annuity Insurance Company (“Great-West”) and where to send the payment.
19 a. Declaration of Jennifer Chen, Exhibit E.
- 20 7. Jones recommended Great-West to Kristal and convinced him to use Great-West as
21 Lassen’s health insurance carrier.
22 a. Declaration of Jennifer Chen, Exhibit F.
- 23 8. From February 1999 to August 1999, Pickering Insurance Services received more than
24 \$20,000 in commissions for employees that enrolled in the health plan, in addition to sales
25 commissions.
26 a. Declaration of Jennifer Chen, Exhibit G.

- 1 9. In March 2000, Jones drafted Lassen's proposed amendment to the health plan on behalf of
2 Lassen and directed Kristal to forward her proposal to Great-West.
3 a. Declaration of Jennifer Chen, Exhibit H.
- 4 10. Jones gave direction to Great-West to apply Lassen's deposit to its health premium
5 payment.
6 a. Declaration of Jennifer Chen, Exhibit I.
- 7 11. Jones had access to the Lassen health plan claim account's check transfer detail and
8 banking activities.
9 a. Declaration of Jennifer Chen, Exhibit J.
- 10 12. Jones and Great-West jointly made the determination to put an administrative hold on
11 Lassen's health insurance in 2000.
12 a. Declaration of Jennifer Chen, Exhibit K.
- 13 13. Jones did not inform Crary that Kristal had failed to pay health insurance premiums and
14 payments during the relevant time period.
15 a. Declaration of Jennifer Chen, Exhibit L.
- 16 14. Jones continued to serve as health plan administrator, even while the plan was placed on
17 administrative hold.
18 a. Declaration of Jennifer Chen, Exhibit M.
- 19 15. Jones continued to serve as health plan administrator, even while she knew claims were not
20 being paid.
21 a. Declaration of Jennifer Chen, Exhibit N.
- 22 16. Jones continued to serve as health plan administrator, even while she knew deducted health
23 insurance premiums were not being remitted to Great-West.
24 a. Declaration of Jennifer Chen, Exhibit O.

II. CONCLUSIONS OF LAW:

A. JONES WAS A NAMED FIDUCIARY UNDER ERISA.

ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1); ERISA § 402(a)(2), 29 U.S.C. § 1102(a)(2).

B. JONES FUNCTIONED AS AN ERISA FIDUCIARY TO THE HEALTH PLAN.

ERISA § 3(21)(A); 29 CFR § 2509.75-8; Mertens v. Hewitt Assocs., 508 U.S. 248, 262; Brock v. Hendershott, 840 F.2d 339, 342 (6th Cir. 1988).

C. JONES BREACHED HER FIDUCIARY DUTIES AND CO-FIDUCIARY DUTIES.

ERISA § 404(a)(1)(B); ERISA § 404(a)(1)(D); ERISA § 405(a), 29 U.S.C. § 1105(a).

Dated: November 26, 2003

/s/ Stephen R. Felson

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CERTIFICATION OF SERVICE

I hereby certify that on November 26, 2003, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following.

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1 I further certify that on November 26, 2003, I served by following by ordinary U.S. Mail:

2 Leonard Kristal (pro se)
3 107 Diablo Drive
Kentfield, CA 94904

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5 /s/ Stephen R. Felson

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